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प्रसाधारण

EXTRAORDINARY

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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 1st June 1971:—

BILL No. 68 OF 1971

A Bill further to amend the Gold (Control) Act, 1968.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Gold (Control) Amendment Act, 1971. Short title and commencement.

(2) It shall be deemed to have come into force on the 20th day of May, 1971.

45 of 1968. 2. In section 71 of the Gold (Control) Act, 1968 (hereinafter referred to as the principal Act),— Amendment of section 71.

(i) for sub-section (1), the following sub-section shall be, and shall be deemed always to have been, substituted, namely:—

“(1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened, together with any package, covering or receptacle in which such gold is found, shall be liable to confiscation:

Provided that where it is established to the satisfaction of the officer adjudging the confiscation that such gold or other thing belongs to a person other than the person who has, by any act or omission, rendered it liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom it belongs, it shall not be ordered to be confiscated but such other action, as is authorised by this Act, may be taken against the person who has, by such act or omission, rendered it liable to confiscation.”;

(ii) for sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely:—

“(2) Where any package, covering or receptacle referred to in sub-section (1) contains any other goods, such contents shall also be liable to confiscation.

(3) Where any gold is liable to confiscation under sub-section (1), it shall be so liable notwithstanding any change in its form, and where such gold is mixed with other goods in such manner that it cannot be separated from those other goods, the whole of such goods, including the gold, shall be liable to confiscation.

(4) On and from the commencement of the Gold (Control) Amendment Act, 1971, the proviso to sub-section (1) shall also apply to any gold or other thing which is liable to confiscation under sub-section (2) or sub-section (3).”.

3. In section 73 of the principal Act, the word “twice” shall be, and shall be deemed always to have been, omitted.

Amend-
ment
of sec-
tion 73.

4. (1) Where any order made, before the commencement of this Act, for the confiscation of any gold or other thing or giving option to pay fine in lieu thereof is such that it could not have been made if the principal Act, as amended by this Act, were in force on the date on which the said order was made, the officer competent under section 73 to adjudge such confiscation shall, on an application made to him by the person aggrieved by such order, set aside the order of confiscation or, as the case may be, the order giving option to pay fine in lieu of confiscation, and also any order imposing penalty in addition to confiscation or giving option to pay fine in lieu thereof, and make a fresh adjudication in accordance with the provisions of the principal Act, as amended by this Act.

Re.open-
ing of past
confisca-
tions.

(2) The power referred to in sub-section (1) shall be exercised by the officer specified therein in relation to the final order of adjudication of confiscation or giving option to pay fine in lieu thereof or imposing any penalty, whether or not such final order was made in appeal under section 80 or in revision under section 81 or section 82.

(3) Every application referred to in sub-section (1) shall be made within ninety days from the commencement of this Act or within such further time, not exceeding ninety days, as the officer specified in that sub-section may, on sufficient cause being shown, allow.

(4) Where, and in so far as, any order for the confiscation of any gold or other thing, or any option given to pay fine in lieu of confiscation, or imposing any penalty is modified or reversed, the officer specified in sub-section (1) shall make an order for such refund or restitution as the circumstances of the case may require:

Provided that where the restitution of any gold or other thing is not practicable, the said authority shall make an order for the payment to the person to whom such restitution is to be made, the market value of such gold or other thing, as on the date on which the fresh adjudication is made.

5. Notwithstanding any judgment, decree or order of any court, any given to pay fine in lieu of confiscation, or penalty imposed under Part XII-A of the Defence of India Rules, 1962.

5. Notwithstanding any judgment, decree or order of any court, any confiscation made penalty imposed or fine levied under the Gold (Control) Act, 1968, before the commencement of this Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, imposed or levied in accordance with the provisions of the Gold (Control) Act, 1968, as amended by this Act.

8 of 1971. 6. (1) The Gold (Control) Amendment Ordinance, 1971 is hereby repealed. Repeal
and
savings.

(2) Notwithstanding such repeal, anything done, any action taken or any order made under the said Ordinance shall be deemed to have been done, taken or made under the corresponding provisions of the Gold (Control) Act, 1968, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

By two Writ Petitions and two Civil Appeals, the legislative competence of Parliament to enact the Gold (Control) Act, 1968, was challenged before the Supreme Court. In addition, the constitutional validity of certain provisions of the Act, namely, (i) section 8(1) which imposes a ban on the possession of primary gold, and (ii) sections 6, 16, 58, 71, 74 and 86 which respectively provide for submission of returns by pawn-brokers, filing of declarations, search, confiscation, imposition of penalty and prosecution for non-declaration of gold, was also challenged. The Supreme Court by a judgment, delivered on the 30th March, 1971, upheld the vires of the Gold (Control) Act, 1968 and also upheld the constitutional validity of all the sections, except that of section 71, which were impugned before that Court.

2. The invalidation of section 71, which provides for the confiscation of gold in relation to which any provision of the Act has been contravened, would have prevented the Government from achieving the central object of the law, namely, prevention of the circulation of the smuggled gold, by the administration of the Gold (Control) Act, 1968. The Gold (Control) Amendment Ordinance, 1971, was, therefore, promulgated by the President. By that Ordinance, it has been provided that where in relation to any gold any provision of the Act is contravened, the gold, if belonging to the offender, would be liable to be confiscated, but where such gold belongs to an innocent person and not to the offender, such gold shall not be ordered to be confiscated but such punitive action, as is provided in the Act, may be taken against the offender for the contravention of the law.

3. In view of the observations made by the Supreme Court, the maximum fine which could be imposed in lieu of confiscation, under section 73, has also been reduced to a sum not exceeding the value of the gold.

4. Since the amendment of section 71 has been made retrospective, provisions have been made in the Ordinance for the reopening of past adjudications of confiscation and for fresh adjudication in the light of the provisions of the Act, as amended by the said Ordinance. Provisions for restitution or refund, where necessary, have also been made in the Ordinance.

5. The Bill seeks to replace the said Ordinance.

NEW DELHI;

The 23rd May, 1971.

K. R. GANESH.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. F.144/10/71-GC.II, dated the 26th May, 1971 from Shri K. R. Ganesh, Minister of State in the Ministry of Finance (Vitta Mantralaya men Rajya Mantri) to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the Gold Control (Amendment) Bill, 1971, has recommended, under clauses (1) and (3) of article 117 of the Constitution, the introduction and consideration of the Bill by the Lok Sabha.

FINANCIAL MEMORANDUM

The Bill seeks to replace the Gold (Control) Amendment Ordinance, 1971. It would not require any addition to the staff which is already in position. Therefore, the Bill, if enacted, would not involve any recurring expenditure on the requirement of personnel and finances in addition to what is being incurred at present on the enforcement of Gold Control.

2. Clause 4 of the Bill, however, provides for reopening of cases, as a consequence of which, in certain cases, it may become necessary either to restitute gold or other thing that may have been confiscated in the past, or where such restitution is not possible, to pay the market value of such gold or other thing. It may also become necessary to refund the fine in lieu of confiscation of gold or other thing or penalty imposed in the past. It is, however, not possible to anticipate accurately the net expenditure which would be involved in this process. However, expenditure so involved is not likely to exceed, in any case, rupees 5 lakhs.

S. L. SHAKDHER,
Secretary.

